STRICTLY CONFIDENTIAL

REPORT OF INVESTIGATION AND FINDINGS

Allegations of Violation of the University of California Policy on Sexual Harassment
September 26, 2014

I.	Background and Allegations
Subject April 2 2012 begar with L	alleged that her coworker, Respondent Phillip Loya, cted her to unwelcome touching on several occasions, from December 2012 to 2014. It and Loya are both UC Berkeley staff members in the alleged that during a happy hour event in December with other coworkers, Loya placed his hand on her thigh underneath a table, and a moving it upward until moved his hand away. In May 2013, she spoke oya privately and asked him to stop touching her, and he agreed. Subsequently, alleged that Loya touched her on the back or shoulder three more times; in 2013, January 2014, and while taking a group photo in April 2014.
II.	Procedural History
2014. Preve On Au The ca	complained about Loya's unwanted touching to her direct supervisor twice. On the second occasion in late July 2014, provided esources, including the contact information for HR representative Jenee Jackson, contacted Jackson, and discussed the allegations with her on August 14, The same day, Jackson referred allegations to the Office for the intion of Harassment and Discrimination (OPHD) for potential further investigation agust 19, 2014, OPHD took the lead role in investigating allegations. ase was assigned to Complaint Resolution Officer Paula Raffaelli (the stigator") on August 29, 2014.
III.	Interim Remedies
The In Loya verthem verthest	farther away from on September 14, 2014. Investigator confirmed with on September 10, 2014, that and will not work on any projects one-on-one, and that all communications between will be through email or in staff meetings with other colleagues present. The igator also confirmed with on September 10, 2014, that Loya would not used in the interim director position while is . The

Investigator confirmed that the state of the staff member, was announced as interim director on September 13, 2014.

IV. Jurisdiction

The Office for the Prevention of Harassment and Discrimination has campus-wide responsibility for responding to sex discrimination complaints and implementation of the University of California Policy on Sexual Harassment¹, which includes the investigation and resolution of complaints received against faculty, staff and students.

V. Applicable Policy

The University of California Policy on Sexual Harassment defines sexual harassment as unwelcome sexual advances, request for sexual favors, and other verbal of physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and non-student or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

VI. Summary of Findings

Based upon a preponderance of the evidence, the Respondent, Phillip Loya, violated the UC Policy on Sexual Harassment. A detailed discussion of the findings is included in Section VIII.

¹ This policy was replaced on February 25, 2014 with a combined Sexual Harassment and Sexual Violence Policy. Because the majority of the behavior attributed to Loya occurred prior to February 25, 2014, the allegations are analyzed under the then-existing policy quoted herein. However, the analysis and outcome would be the same under either policy.

VII. The Investigation

OPHD Complaint Resolution Officer, Paula Raffaelli ("the Investigator") conducted the administrative investigation. She interviewed Complainant on September 3, 2014 and conducted a follow-up interview September 11, 2014. She interviewed Respondent Loya on September 8, 2014, and did a follow-up interview on September 22, 2014. She interviewed Witness on September 10, 2014. She also reviewed email communications between and and between and Jenee Jackson, and photos and text messages provided by both Loya.

A. Statements

1. Complainant's Statement

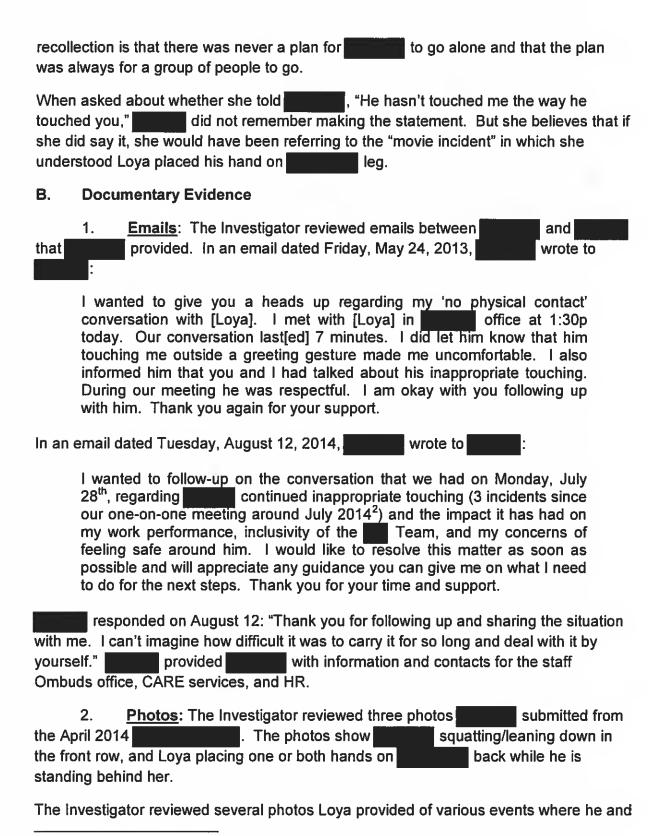
is a UC Berkeley staff member in the assume and Loya work together at staff members. Until May 2013, Loya was stationed in Los Angeles, but he often traveled up to Berkeley. Said that until December 2012, she noticed she got a lot of hugs from Loya, but she did not think anything was wrong. She said that around July 2012,
she, Loya, her supervisor and and husband went to a movie. She felt Loya's hand brush her thigh and she moved her leg away. But she assumed this was an accident and did not feel the need to say anything. However, in December 2012, Loya, and the rest of the team went to a happy hour event at
2012, Loya, and the rest of the least was sitting next to Loya at a long table with the rest of the least team, as well as staff who joined them – about 15 people total. Loya placed his hand on least thigh under the table, and began to move his hand up toward crotch. It is grabbed his hand and pushed it away from her thigh. She did not look at Loya and neither least of the least team went to a happy hour event at least was sitting next to Loya at a long staff who joined them – about 15 people total. Loya placed his hand on least thigh under the table, and began to move his hand up toward least crotch. It is a least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total. Loya placed his hand on least staff who joined them – about 15 people total his hand on least staff who joined them – about 15 people total his hand on least staff who joined them – about 15 people total his hand on least
Over the subsequent winter break, grew anxious because she was scheduled to fly to Los Angeles alone to support Loya on a work project and she did not want to go alone. In January 2013, she decided to speak with her supervisor she could be about the Pappy's incident, as well as the earlier movie incident from July 2012, which she decided to bring up in light of her discomfort after the Pappy's incident. Total total that she and so other female staff members would join her on the trip to LA in February 2013, and the so of them drove down to LA together in a van. At their January 2013 meeting, salso told salso told salso, "I encourage you to talk to [Loya]."
In May 2013, spoke with Loya privately. She told him that she did not want him to touch her, that the touching made her uncomfortable, that she did not "like how

examples of unwelcome touching. Loya responded, "This is how I am" and "I am just a touchy person." She told him not to touch her more than necessary for a professional greeting. The meeting lasted approximately seven minutes. After the May 2013 discussion, said that Loya touched her three more times. First, around Fall 2013, he touched her on the back but she "let it go" because she assumed Loya "forgot" that he was not supposed to touch her. In January 2014, while she and other coworkers were walking outside to get coffee at Strada, he rubbed or "caressed" her back while they were beginning to cross the street. The third time was in late April 2014 during a work event. While staff and others were posing for a photo, Lova placed his hands on back. again. She told On July 28, 2014, spoke with about the three incidents discussed above, and told her that due to her discomfort with Loya she had eliminated herself from social gatherings with coworkers and did not "feel a part of th[e] team." also expressed concerns that her own relationship with had deteriorated. At this meeting, told that Loya "touches me too, but I'm married." asked, "You're okay with him touching you?" and understood the latter responded, "He didn't touch me like he touched you." statement to refer to the Pappy's incident. . She asked if she wanted to apply to be interim director, but declined. explained that because of the incidents with Loya and her subsequent elimination from group events, her confidence is low, and she did not feel appreciated or that the team valued her. asked how she would feel if Loya became the interim director, and responded that she would not like it. said he could be the interim director, but could not report to him. At the time of the September 3 interview with the Investigator, and Loya were . This made uncomfortable even though she stated that her back is to him, she "zones out," and she does not know what he is doing. She said he has not touched her since April 2014. sometimes uses the get work done. 2. Respondent's Statement Phillip Loya is a UC Berkeley staff member in the He has worked with since November 2008. In 2010, he moved to to do outreach with students. He moved back to in May 2013. His first indication of a problem with was when they had their one-on-one told him that she conversation somewhere "between March and June 2013."

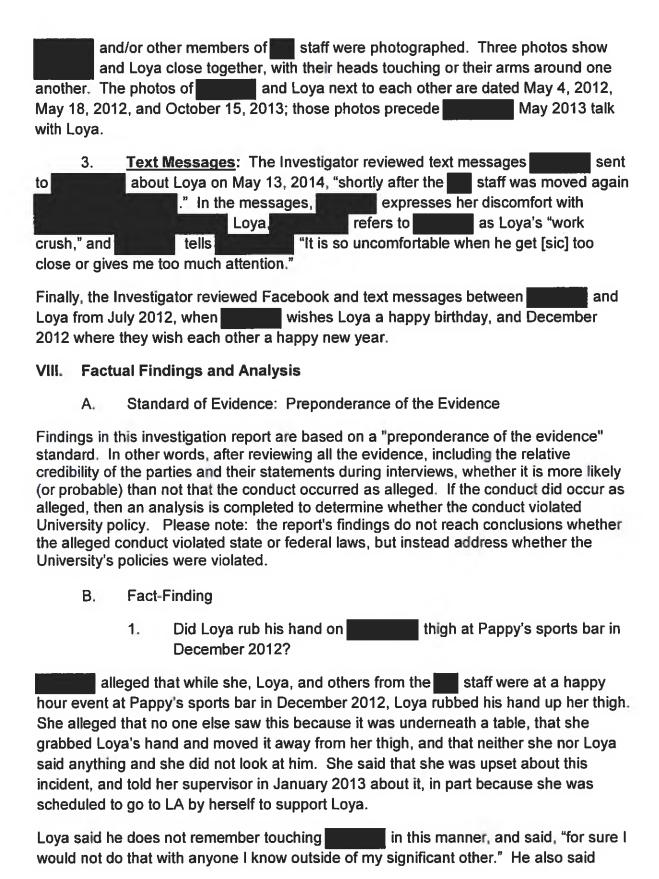
you touch me," and she wanted him to stop. She did not give him any specific

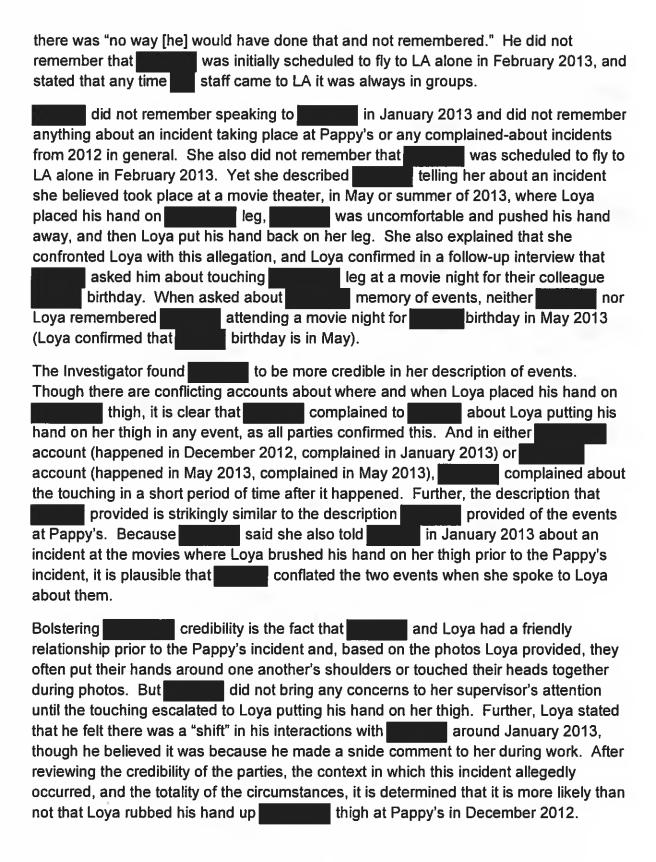
felt uncomfortable when he touched her. Specifically, she said it made him uncomfortable when he touched her arm or back. He was taken aback because they often took photos together, and because the staff was close. He noted that had previously picked him up from the airport and/or they would go to dinner together. Though he was taken aback, he understood she could be uncomfortable. He could tell she was nervous and he was too, and he agreed not to touch her anymore. He apologized and said he would give her the space she needs, and he felt that the short meeting ended on a good note. He was confused about why was upset because she did not give any specific examples, but he did not want to probe further or talk to anyone else about it. He denied saying anything along the lines of "this is how I am" or "I am just a touchy person."
After this talk, Loya spoke with told Loya to be careful in his approach with and to ensure that other people were around them. She did not tell him of any specific incidents.
Subsequently, Loya remembers that his relationship with went back to normal. He specifically remembers making an effort to wave goodbye to rather than hug her at a May/June 2013 retirement party for former director. He remembers that during this time their work did not really coincide and that they talked casually. He does not remember any physical touching after the May 2013 conversation.
Loya spoke with again in August 2014. He said that at this meeting, told him that was uncomfortable because he touched her on her arm or elbow and also at a graduation event called the fine occasion. It is also told him that complained about an incident where several people went to see a movie for their colleague birthday, Loya placed his hand on took his hand and moved it away. Loya does not remember this incident taking place. He remembers going to see a movie for birthday in May 2013, but he does not remember being there. He told told he felt bad and asked what he could do. It told him to be hyperaware of his actions.
When asked about the December 2012 Pappy's incident, Loya said he had no memory of the specific night, and that he did not touch leg. He said he did not know how his hand would even be on her thigh, and "for sure I would not do that with anyone outside of my significant other." He could not think of any explanation for why would claim he did it. When asked if perhaps was conflating the movie incident and the Pappy's incident, Loya stated that he did not remember touching on the leg in either event, and did not understand why was making these allegations.

Loya also denied touching after she spoke with him in May 2013. He denied placing his hand on her back and rubbing her back, and stated that that is not something he typically does; instead, he is a "hugger" and a "high-fiver." Regarding the April 2014 photo touch, he does not remember touching back, but he acknowledged that he "could've" touched her back or shoulder.
3. <u>Witness Statement</u>
is the said that Loya is very comfortable around people and has put his hands on her shoulders, but not in an uncomfortable way. She feels any touching from Loya was very casual, meaning that he did not "linger" for any inappropriate time or touch at any inappropriate times.
first spoke with around summer of 2013. She remembers that told her about an incident that happened while staff went to the movies, in May or summer of 2013. She remembers telling her that at the movies, Loya placed his hand on was uncomfortable and pushed his hand away, and then Loya put his hand back on her leg. was unsure exactly what the details or timing was on this incident, but speculated that it was in summer 2013 when some that the colleagues went for a colleague's birthday.
She spoke with Loya shortly after told him to stop touching her in May 2013. She told Loya about the movie incident allegation. She remembers that Loya was surprised because he and had gone out to dinner before and she had picked him up from the airport. But he understood that could be uncomfortable.
In late July 2014, spoke with a second time. It told that after told Loya to stop touching her, he touched her shoulder on one occasion, her back on a second, and her back again while a photo was being taken for the
In August 2014, followed-up with Loya after this second complaint, and told him that complained about three additional incidents. Loya told he could not remember intentionally touching he was concerned and surprised but not defensive.
said she did not remember hearing about the Pappy's incident, or any incidents that happened in 2012. She did not have any memory of speaking with prior to summer 2013; her memory is that her first talk with was in May or summer of 2013. It also did not remember telling that she would join her on a trip to Los Angeles in February 2013 so that she would not need to go alone;

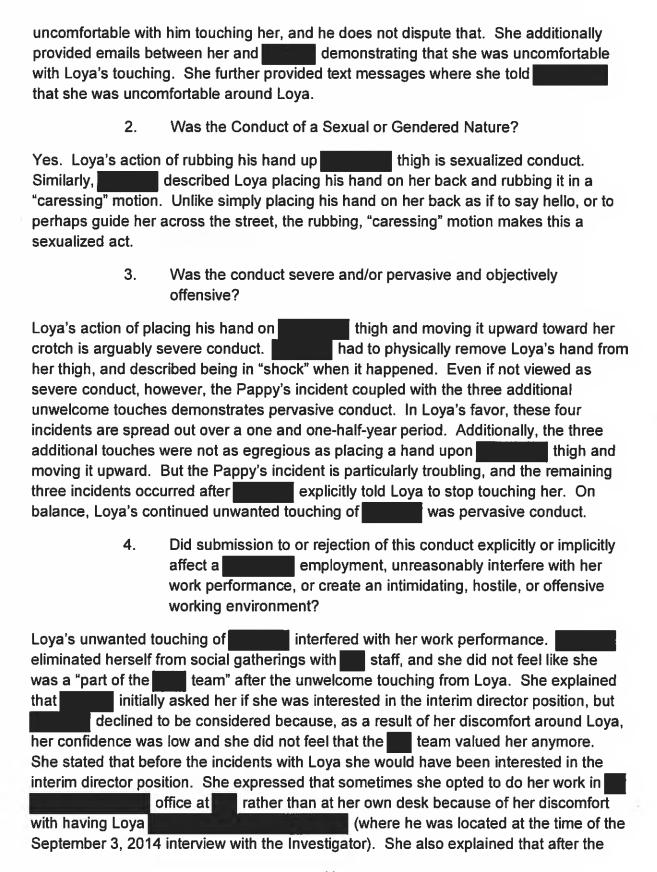


clarified in an email to Jenee Jackson on Thursday, August 14, 2014 that she inadvertently wrote July 2014 but meant May 2013.





2. Did Loya touch three additional times after she told him to stop touching her in May 2013?
said that Loya touched her in Fall 2013, he rubbed or "caressed" her back in January 2014, and that he touched her on her back in April 2014. Loya denied that he touched since told him to stop touching her in their May 2013 discussion, and he stated that he purposely kept a distance from and opted to wave goodbye to her rather than hug her goodbye. But he acknowledged it was "possible" that he touched her on her back during the photo for the April 2014
The photos provided clearly show Loya with his hands on back during the April 2014 After reviewing the credibility of the parties and the totality of the circumstances, it is determined that it is more likely than not that Loya touched on the other two occasions alleged. The Investigator finds more credible, in part because she complained to that Loya touched her three times since she told him to stop touching her in May 2013, and she documented this in an email to dated August 12, 2014. Also stated that told her about Loya touching her three additional times, once on her shoulder, once on her back, and again on her back during the photographic evidence showing that Loya touched her during the after she told him to stop, which lends credibility to her claim that he touched her on other occasions.
C. Did the Alleged Behavior Constitute Sexual Harassment in Violation of the UC Policy?
The University of California Policy on Sexual Harassment defines sexual harassment as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment.
In determining whether reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.
1. Was the Conduct Unwelcome?
Yes. twice told her supervisor that she was uncomfortable with Loya touching her: first in January 2013 and again on July 28, 2014. said she was "in shock" when Loya placed his hand on her thigh at Pappy's. She told Loya directly that she was



Pappy's incident, she began looking for a different job because she was too				
uncomfortable in her work environment. When she applied to but did not get a different				
job, she felt that her relationship with	also changed, and she noted that			
did not check in on her as often and began forwarding her job announcements.				

IX. Conclusion

The Investigator evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged incidents occurred. The standard by which the evidence was weighed was "more likely than not." The evidence gathered supports the conclusion that Respondent Phillip Loya more likely than not subjected Complainant to pervasive, unwanted touching. Therefore, it is determined that Loya did violate the University of California Policy on Sexual Harassment.